




Homeland Security

August 24, 2004

MEMORANDUM FOR: ROBERT C. BONNER
COMMISSIONER
CUSTOMS AND BORDER PROTECTION

MICHAEL J. GARCIA
ASSISTANT SECRETARY
IMMIGRATION AND CUSTOMS ENFORCEMENT

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ADMINISTRATOR
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FROM: Asa Hutchinson 
Undersecretary for Border and Transportation Security

SUBJECT: Access to Commercial Vessels and Waterfront Facilities

A working group consisting of representatives from CBP, ICE, TSA and Coast Guard was established to standardize credentialing requirements for commercial vessel boardings and entry to waterfront facilities. Access control is the cornerstone of the new security regime for commercial vessels and waterfront facilities. Due to the new maritime security requirements of the International Ship and Port Facility Security Code and the US Maritime Transportation Security Act (MTSA), the maritime industry must fully enact a series of new security procedures under penalty of potentially serious civil and criminal sanctions, operational controls and economic consequences. For the purposes of the MTSA a commercial vessel is defined in 33 CFR 104.105 and waterfront facilities are defined in 33 CFR 105.105.

Recognizing that security is a shared responsibility, with both the private and public sectors playing a significant role in this new global maritime security regime, law enforcement personnel should perform the following actions when attempting to access a commercial vessel or facility when performing duties in the normal course of business. These procedures shall not apply to law enforcement officers accessing vessels or facilities during emergencies or exigent circumstances in the performance of their duties.

- (1) Identify yourself and organization verbally;
- (2) Present an official government issued photo identification card at each security check-point, being cognizant of protecting personal information (Ref: 33 CFR 101.515). There is no requirement to provide an alternate means of identification i.e. drivers license;
- (3) Explain, if necessary, that the ID card is federal property and therefore cannot and will not be surrendered;

- (4) Sign the visitor logbook, provide an office contact number if requested, and ensure that personal information (such as social security number) is not entered into the log;
- (5) Explain, if necessary, that properly identified law enforcement personnel on official business are not required to consent to a baggage or government vehicle search;
- (6) Explain, if necessary, that law enforcement personnel are authorized to carry firearms while conducting routine operations on a vessel or facility;
- (7) Recommend the facility or vessel amend their security plan if their approved security plan conflicts with the procedures outlined here for dealing with law enforcement officers; and
- (8) Accept a personnel escort, if an escort is readily available, and/or visitor badge if requested by the vessel or facility security representative. On those occasions in which law enforcement officials have specific safety or security concerns, law enforcement personnel may decline the offer of an escort.

Testing of Facility or Vessel Access Control: Law enforcement officials can expect to be questioned, as per MTSA requirements, when attempting to access a facility or vessel. An attempt to test security procedures by fabricating or refusing to show credentials harms the government's overall credibility and should not be undertaken. An owner or operator who appropriately denies access to an individual who refuses to properly establish his or her identity is in compliance with the MTSA and its associated regulations. Customs and Border Protection (CBP) Port Directors will work with the Coast Guard Captain of the Port (COTP) to address and resolve issues in regard to challenges as well as need to recommend that vessel, terminal operators and facilities amend their security plans.

Swift and decisive actions shall be initiated if law enforcement personnel are denied access to a facility or vessel after complying with the above access procedures. Notification to the (COTP) should be immediate if law enforcement officials' access to a vessel or facility is delayed or obstructed. While what constitutes delay or obstruction is highly fact dependent, the Coast Guard does not anticipate access procedures for law enforcement officials in routine circumstances complying with the procedures above to exceed 10 minutes.

The requirement to notify the COTP does not preclude the law enforcement officer from taking any lawful action to compel compliance with lawful orders. Law enforcement officers have the right to access vessels and facilities subject to inspection without delay or obstruction. CBP authority comes from 19 USC 70 obstruction of revenue officers by masters of vessels. If the master of any vessel shall obstruct or hinder, or shall intentionally cause any obstruction or hindrance to any officer in lawfully going on board such vessel, for the purpose of carrying into effect any of the revenue or navigation laws of the United States, he shall for every such offense be liable to a penalty of not more than \$2,000 nor less than \$500.

Further, law enforcement officers have the right to use reasonable force to compel compliance with lawful orders, including orders by the law enforcement officer to permit access. If time and the operational situation permit, however, it is preferable to engage COTP assistance in responding to non-compliant vessel or facility operators.

In addition to lawful actions taken by law enforcement officers to gain access to vessels and facilities, COTPS have the following authorities which may be used against a commercial entity that is non-compliant in providing access to properly credentialed law enforcement officials:

(1) U.S. vessels: Issuance of COTP Order to cease operations, COTP authorization to search and/or take full or partial possession or control of the vessel in accordance with 33 CFR 6.04-8, and appropriate civil penalty/criminal sanctions.

(2) **Foreign Vessels:** IMO detention, expulsion of vessel from U.S. waters, COTP authorization to search and/or take full or partial possession or control of the vessel in accordance with 33 CFR 6.04-8, and appropriate civil penalty/criminal sanctions.

(3) **Waterfront Facility:** Issuance of COTP Order to suspend operations, COTP authorization to inspect and/or search the facility and/or any person, article, or thing thereon or therein (including conducting such activity in conjunction with other available law enforcement personnel), and appropriate civil penalty/criminal sanctions.

Note that owners/operators faced with any official who declines to establish his or her identity will be encouraged to provide the official with a copy of the regulations and the relevant section on access control. Additionally, if owners/operators have doubts about the authenticity of an official government identification document or credential or are concerned that denying access to an official may result in negative consequences, they are instructed contact the cognizant Coast Guard Captain of the Port (COTP) or appropriate agency head for guidance and assistance in effectively resolving the issue.

cc: W. Ralph Basham
Director
U.S. Secret Service

Admiral Thomas H. Collins
Commandant
U.S. Coast Guard

CG NOTE: Relevant U.S.Coast Guard Policy Advisory Council Decision (PACD) #30-04, "Credentialing of Federal, State and Local Officials," was issued 17 June 2004. A copy of PACD #30-04 can be found on the CG Intranet under 'Policy Guidance' at <http://cgweb.comdt.uscg.mil/G-Mp/Helpdesk.htm> or on the CG Internet under 'Policy Guidance' at <http://www.uscg.mil/hq/g-m/mp/mtsa.shtml>.